

TRUST FUND STATUS REPORTS - *You May Have to Do Them*

The term “threshold reporting” will sound familiar to some mortgage loan brokers but not to others. “Threshold reporting” generally applies to those brokers who arrange loans for, sell loans to, or service loans for, primarily private, individual investors. These loans are sometimes referred to as “hard money loans.”

When a broker meets the “threshold” criteria established in Business and Professions Code Section 10232,

the broker must submit specified quarterly and annual reports to the Department of Real Estate. Loans packaged for, or sold to, the institutional lenders such as banks, savings and loans, Fannie Mae and Freddie Mac (see Section 10232(c) of the Business and Professions Code for a complete list) do not count toward meeting the threshold criteria. However, even if you are a broker who is not required to file “threshold reports,” you may have to prepare quarterly trust fund status re-

ports and retain them in your office for possible review by the Department.

Business and Professions Code Section 10232.25(e) requires any broker who engages in the arranging or making of loans secured directly or collaterally by liens on real property, or a business opportunity, or who arranges for the sale of, or directly sells, notes secured directly or collaterally by liens on real property or a business opportunity, **and** who collects trust funds, in-

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Consumer Caution and Home Ownership Counseling Notice

The Mortgage Loan Activities Unit has received a number of calls from licensees who read the Summer 2002 Real Estate Bulletin article entitled “Predatory Lending Law to Take Effect July 1, 2002.” In the article, reference is made to a specified **Consumer Caution and Home Ownership Counseling Notice** that must be given to a consumer no later than three (3) days prior to signing

loan documents for a loan that is a **covered loan** as defined in the new law. Licensees have asked if the DRE has copies of the Notice.

The Notice is not a DRE form, however brokers can easily comply with the requirement for the Notice by extracting the exact language of the Notice from Financial Code Section 4973(k)(1) and incorporating the language into their own form. Brokers must give the consumer a copy of

the Notice and keep a signed acknowledgment that the consumer has received a copy.

Financial Code Sections 4970 through 4979.8 are available on the DRE Web site **www.dre.ca.gov**. Click on **Licensees**, then **Predatory Lending**, and then **Review the Law**. Further questions regarding the new law may be directed to the Mortgage Loan Activities Unit at (916)227-0770.

MORTGAGE LOAN BULLETIN

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STATE OF CALIFORNIA
GRAY DAVIS, *Governor*

BUSINESS, TRANSPORTATION AND
HOUSING AGENCY
MARIA CONTRERAS-SWEET
Secretary

DEPARTMENT OF REAL ESTATE
PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Principal Office
2201 Broadway
Sacramento, CA 95818

Mailing Address
P.O. Box 187000, Sacramento, CA
95818-7000

Telephone
(916) 227-0770

John R. Liberator
Chief Deputy Commissioner

Robin Wilson
Chief Counsel

Randy Brendia
Managing Deputy Commissioner IV
Mortgage Lending

Gary H. Sibner
Senior Deputy Commissioner
Mortgage Lending Advertising

The *MORTGAGE LOAN BULLETIN* is published as an educational service to real estate licensees engaged in mortgage lending activities.

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DRE's Internet address is:
<http://www.dre.ca.gov>



DRE FORUM June 7, 2002

Attendees of the DRE Forum, held June 7, 2002 in Sacramento, enjoyed a sneak preview of the DRE's new Electronic Licensing Transactions (*eLicensing*) System, presented by Barbara Bigby, Manager, Information Systems Section and staff. The special presentation included a demonstration of various *eLicensing* transactions such as license renewal and fee submittal via the Internet. Features highlighted were online help, detailed instructions, customized menus based upon conditions of license, the ability to print a completed online form, online transaction tracking, and return e-mail acknowledgement of certain transactions.



The Commissioner was pleased to receive "congratulations on a fantastic Web site."

Commissioner Paula Reddish Zinnemann announced that the DRE is funding the development of dynamic educational videos to inform young adults about the home buying and renting processes. The videos are expected to be available for use by high schools, adult schools and community organizations in 2003.

Chief Deputy Commissioner John Liberator reported on various aspects of DRE operations including Fiscal, Licensing, Subdivisions, Enforcement, Audits and Web site improvements. After everyone was thanked for their ongoing energy conservation efforts, the DRE responded to questions.

The complete Meeting Review is available on the DRE Web site www.dre.ca.gov (click on **About DRE**, then **DRE Forum**).

ADVERTISING APPROVALS



Recently, the Mortgage Loan Activities Unit has received several requests to review and approve mortgage loan advertisements via fax. Ads submitted in this manner cannot be reviewed or approved.

Requests for approval of mortgage loan advertising must be submitted to the Department in accordance with Business and Professions Code Section 10232.1 and Commissioner's Regulation 2847. A proper submission package consists of two (2) copies of the Mortgage Loan Advertising Submittal (RE884) completed and signed by the **broker**; three (3) copies of the proposed ad; and a check in the amount of \$40.00 payable to the Department of Real Estate.

The package should be mailed to the Department of Real Estate, Mortgage Loan Activities Unit, P.O. Box 187000, Sacramento, CA 95818-7000. Each advertisement must be submitted separately.

The Department will not review advertisements submitted without the appropriate form or without the proper fee, or submitted by any person other than the broker or designated officer of a licensed corporation.

Following these guidelines will ensure that brokers who wish to voluntarily submit their advertising for approval will receive a timely review. For questions regarding advertising submissions, or to receive a package containing important information regarding advertising compliance, please call the Mortgage Loan Activities Unit at (916) 227-0770.

The Mortgage Loan Advertising Submittal (RE884) is available on the DRE Web site www.dre.ca.gov in **Forms**.

BROKER SUPERVISION – IT'S A *MUST*

When the quarterly Real Estate Bulletin arrives at your home or office, you may look at the Disciplinary Action section to see if you know anyone that has had their license disciplined by the DRE. Some of the most common reasons for disciplinary actions are trust fund handling and record keeping violations, a topic covered in an article entitled “Ten Most Common Violations Found in DRE Audits” in a prior Mortgage Loan Bulletin (Summer 2002), the Real Estate Bulletin (Winter 2000), and now available on the DRE Web site www.dre.ca.gov (click on **Licenses**, then **Complying with the Real Estate Law**, then **Ten Most Common Violations Found in DRE Audits**). However, another violation for which brokers are often disciplined, and that receives less attention, involves the failure to provide adequate and reasonable supervision of their salespeople.

Commissioner's Regulation 2725 states, in part, that “A broker shall exercise reasonable supervision over the activities of his or her salespersons.” “Reasonable supervision” includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage numerous activities in which a salesperson may be

involved. These activities include, but are not limited to, any transaction requiring a real estate license, trust fund handling, and advertising any service for which a license is required. The regulation allows the number of salespersons employed and the number of branch offices to be taken into consideration when determining the form and extent of such policies, rules, procedures and systems. Brokers who have many salespersons and/or many branch office locations will need to demonstrate a much more sophisticated system for ensuring supervision than a broker with only a few salespersons and/or doing business from one location. Example aspects of a supervisory system include written policies and procedures, regularly scheduled training, branch office visits and regular reports of salespersons' activities. A broker may also use the services of other brokers or salespersons employed by the broker to assist in the supervision, as long as the broker does not relinquish overall responsibility for that supervision.

Many of the more serious violations committed by salespersons (mishandling of trust funds, unlawfully collecting advance fees, misrepresentations and dishonest dealings with consumers) can occur due to a lack of proper supervision. When the Department receives a complaint against a licensee and initiates an investigation, one aspect of that investigation may include whether or not the broker is providing the required supervision. Brokers who fail to supervise their employees are not only inviting possible disciplinary action against the salesperson for various violations of the Real Estate Law and regulations, but are also potentially exposing themselves to discipline by the DRE for failure to supervise that employee. The Commissioner can suspend or revoke a broker's license under Business and Professions Code Section 10177(h) which states “As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.”

Brokers should review their policies and procedures in light of Commissioner's Regulation 2725 to ensure they are properly supervising their salespeople. By doing so, you can better ensure that the actions of your salespeople are in the best interests of your clients. The Business and Professions Code and Commissioner's Regulations are located in the Real Estate Law book and can also be accessed on the DRE web site www.dre.ca.gov (click on **Real Estate Law**). Questions may also be directed to the Mortgage Loan Activities Unit by calling (916) 227-0770. 📞

Broker and salesperson licenses
can be renewed at www.dre.ca.gov



- ① personal and secure user id and password
- ② automated fee payment and processing
- ③ help available every step of the way
- ④ customized menu options
- ⑤ transaction status tracking
- ⑥ email confirmations

Also use *eLicensing* for:

Broker, salesperson, officer and
branch duplicate license requests

Salesperson requests to
change employing broker

Mailing address changes

*To use eLicensing, you must have an accurate social security number and date of birth on file with the DRE and be licensed in good standing. License renewals may not be filed using eLicensing if you hold a restricted license or have not established permanent legal presence.

California Housing Finance Agency

LOAN PROGRAMS



At trade shows with local real estate organizations throughout the state, licensees often ask questions about affordable housing programs provided by and through the California Housing Finance Agency (CHFA). If you haven't talked recently with a CHFA representative or qualified lender, check out some of the frequently asked questions from your peers - the answers may surprise you.

How long has CHFA been in existence and what do you do?

CHFA was chartered 26 years ago as an affordable lending institution to finance safe and affordable housing for Californians. A completely self-funded state agency, CHFA offers a wide range of loan products that includes production of \$1 billion annually in low interest loans to first-time homebuyers and \$620 million in homeowner's mortgage insurance services and multi-family lending programs. No taxpayer dollars are used to repay loans since CHFA raises its capital through the sale of mortgage bonds which are serviced by the revenues from its programs.

What's the CHFA "Differential Advantage"?

CHFA offers 30 year below-market fixed interest rate loans to first-time homebuyers who meet the income and sales price limits for the county in which they wish to purchase. This can translate into more affordable monthly payments for homebuyers or the ability to qualify for a higher loan amount. CHFA lenders say our interest rates, in conjunction with layered funding and specialty programs, act as a bridge for renters to become homebuyers.

I don't work with "lower income" clients—your programs won't apply to me.

Look again. CHFA loans are for some of the people, some of the time. Eligibility is determined by income limits and sales price limits for each county. The limits are estab-

lished by federal guidelines and updated periodically. Licensees are often surprised to see how generous sales and income limits may be for their respective areas, especially since town homes and condominiums are included. In Fresno, for example the income limit for a household of 3+ can be up to \$69,920 and the sales price limit for new construction is \$169,109. In higher cost Los Angeles County, the income limit is \$77,140 with a sales price limit of \$314,223.

Does CHFA work with qualified lenders?

Yes! Bank of America, Washington Mutual, Wells Fargo, Countrywide Home Loans, Chase Manhattan, GMAC and US Bank represent just a few of the 45 CHFA approved lenders statewide. With over 500 branch locations and over 3,600 brokers and affiliates, it's easy to find a CHFA qualified lender in your area. Check www.chfa.ca.gov or call 1-800-789-2432 to find a lender in your region.

Aren't there geographic restrictions with your programs?

No! This is a common misconception. CHFA loans are available throughout the state and homebuyers are free to live in counties of their choice. We lend 365 days a year and also offer targeted programs such as the Extra Credit Teacher's Program (ECTP). This is a low interest loan and down payment assistance specialty program for educators that teach in low performing schools. Teachers eligible for this program may reside and purchase property in the county of their choice.

For more information, call 1-800-789-2432 or check www.chfa.ca.gov.

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cluding appraisal/credit report fees, but is not required to submit “threshold reports” to the Department, to complete and retain specified trust fund status reports. The reports consist of the Trust Fund Status Report (RE 855), Trust Fund Bank Account Reconciliation (RE 856), and the bank account statements for the last month of the fiscal quarter. The reports must be completed within 30 days of the end of each fiscal quarter. Note, brokers whose lenders or note owners require (a) a monthly reconciliation of trust account

balances, (b) annual CPA-audited financial statements and (c) whose lenders or note-owners have a contractual right to audit the trust accounts held by the broker on behalf of the lender or note-owner, are not required to prepare and retain the trust fund status reports.

Therefore, even though you may not be involved in “hard-money” transactions with private individual investors, if you collect trust funds and either package or make loans, or engage in the sale of notes, you may have to prepare

and retain trust fund status reports. It is recommended that mortgage loan brokers fully review the provisions of Sections 10232 and 10232.25 of the Business and Professions Code. You may review these statutes on the DRE Web site www.dre.ca.gov under **Real Estate Law**. The above-referenced forms are also available on the DRE Web site under **Forms**.

Questions regarding this article should be directed to the Mortgage Loan Activities Unit at (916)227-0770.

Are Trust Fund Status Reports required of you?

YES, IF:

- you engage in the arranging or making of loans secured directly or collaterally by liens on real property or a business opportunity
- or**
- you arrange for the sale of or directly sell notes secured directly or collaterally by liens on real property or a business opportunity
- and**
- you have collected trust funds, including appraisal/credit report fees, but are not required to submit “threshold reports” to the Department

NO, IF:

- your lenders or note owners require a monthly reconciliation of trust account balances and annual CPA-audited financial statements
- and**
- your lenders or note-owners have a contractual right to audit the trust accounts held by you on behalf of the lender or note-owner

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DRE OUTREACH EFFORTS

The Department of Real Estate Mortgage Loan Activities Unit was busy this spring and summer informing consumer and real estate industry groups throughout California about reverse mortgages, multi-lender transactions, predatory lending, advertising and other issues related to mortgage lending.



The DRE also had the opportunity to participate in Urban Housing Strategies Symposium events in Oakland and Los Angeles, which were coordinated by the HUD-Approved National Association of Real Estate Brokers Investment Division–Housing Counseling Agency. The DRE provided helpful real estate related consumer protection information to those who attended. Several consumers thanked DRE staff for participating and expressed appreciation for the DRE's support.

The DRE will often provide staff to speak to interested consumer and industry groups regarding a variety of topics. To inquire, please submit a written request to the DRE Public Information Office. 🇺🇸